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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,287	07/18/2002	Konstantinos Samaras	Samaras 7-5-7	1491

7590 05/31/2006

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EXAMINER	
CHAN, JASON	
ART UNIT	**PAPER NUMBER**
2613	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/980,287	Applicant(s) SAMARAS ET AL.	
	Examiner Frank Duong	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See the attachment! .
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

FRANK DUONG
PRIMARY EXAMINER

Attachment

The request for consideration filed 05/22/2006 has been fully reviewed and considered. The arguments are not persuasive; therefore, the rejection is maintained. Applicants' arguments will be addressed as followings:

In the Remarks of the outstanding response of the request, pertaining the rejection of claim 1, Applicants agree the Dupont reference, at col. 3, lines 13-19, does indeed disclose "*[A] first sender 102 transmits first data unit (e.g., data units 210) and a second sender 108 transmits second data units (e.g., data units 220). One such burst is shown in expanded form as burst 201.*" However, the Applicants disagree with the Dupont teaching and allege "*that Dupont does not clearly or unambiguously disclose the principle of placing data units of two different users together in the same TDMA transmission burst. Furthermore, Dupont does not disclose or suggest any detail as to how that might be done". To support the allegation the Applicants further allege the Dupont's system is a GPRS system for transmitting GPRS data burst. GPRS bursts are known to only serve one user data per burst*".

In response Examiner respectfully disagrees with the Applicants' allegation of the Dupont's teaching. There is undeniably that Dupont, as clearly pointed out in the Office Action and agreed by the Applicants, that Dupont does indeed recited "*[A] first sender 102 transmits first data unit (e.g., data units 210) and a second sender 108 transmits second data units (e.g., data units 220). One such burst is shown in expanded form as burst 201 (Dupont, col. 3, lines 13-19).*" Such recitation clearly anticipates the claimed

limitation in a manner as claimed. As for the allegation that Dupont's system is a GPRS system; thus, Dupont's GPRS burst cannot anticipate the claimed limitation. Examiner's response is no language in the claim to exclude the using of Dupont reference to reject the claimed invention. Perhaps the Applicants should further amend the claim to exclude the use of Dupont reference once for all.

As for the concern/argument that the prior art of Dupont has an error or not operable, Examiner's response is when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention, the reference is presumed to be operable or had no error. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980).

FRANK DUONG
PRIMARY EXAMINER